



## BRIEFING NOTE TO THE DEPUTY MINISTER

### LAKE MANITOBA AND LAKE ST. MARTIN OUTLET CHANNEL PROJECT STATUS UPDATE UNDER THE DISASTER MITIGATION AND ADAPTATION FUND

(For Information)

#### PURPOSE

- This note provides a status update related to the Lake Manitoba and Lake St. Martin Outlet Channel (LMLSMOC) Project (the Project) under the Disaster Mitigation and Adaptation Fund (DMAF).

#### HIGHLIGHTS/KEY CONSIDERATIONS

- The Project was originally identified as a priority in Budget 2016 and consists of a new permanent flood control management system. It includes two new diversion channels, construction of bridges and water control structure, 24-kilovolt distribution line and re-alignment of highways and roads.
- The Project was announced under DMAF in June 2018 and Infrastructure Canada (INFC) and the Government of Manitoba (Manitoba) began negotiating the Contribution Agreement (CA) shortly thereafter.
- A full *Canadian Environmental Assessment Act, 2012* process is required for this Project and is currently underway to ensure a complete Environmental Assessment (EA) and that all Duty to Consult (DTC) obligations were identified and addressed. The DMAF team met with representatives from the Province in 2018 to discuss the Project and its CA.
- [REDACTED]
- As with all projects, any flow of funds requires that the CA be finalized and signed by both parties. As of today, some clauses are still under discussion by both parties, specifically:

○ [REDACTED]

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[REDACTED]

- The CA requires that a Greenhouse Gas (GHG) assessment be submitted and accepted by Canada prior to INFC flowing funds to Manitoba. [REDACTED]

[REDACTED]

- [REDACTED]
- [REDACTED]

- The EA and DTC activities are currently underway [REDACTED]

[REDACTED]

**KEY BACKGROUND**

- In June 2018, a number of Indigenous groups in the vicinity of the Project submitted a court proceeding against Manitoba and Canada (Minister of Environment and Climate Change Canada) in relation to this Project, namely seeking a review panel format as part of the CEAA review process as opposed to a Technical Advisory Group (TAG) format. A court decision upheld the Minister of Environment and Climate Change Canada's decision regarding the TAG format for the consultation process. The appeal period for this decision was September 30, 2019, and no appeal was filed. [REDACTED]

[REDACTED]

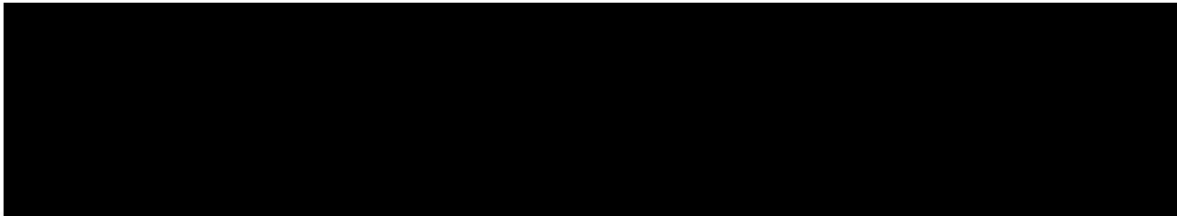
- [REDACTED]

**PROTECTED B**

- In August 2019, the *Impact Assessment Act* (IAA) came into force but because the review under *CEAA 2012* has already started, Manitoba has the choice of continuing under the latter or have the Project reviewed under the IAA. Manitoba decided to continue with the *CEAA, 2012* process.

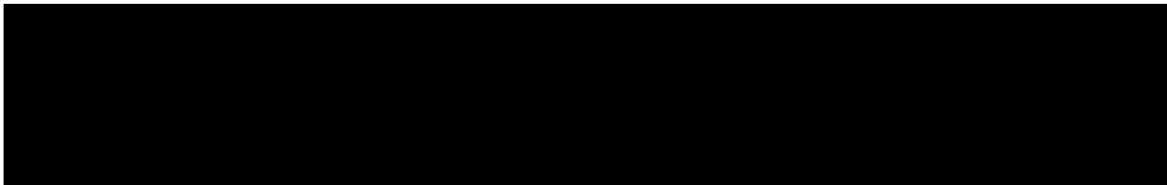
**NEXT STEPS**

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- The DMAF team continues to work closely with Manitoba, INFC's Aboriginal Consultation and Environmental Services and Legal Services on this file.

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Marc Fortin  
Assistant Deputy Minister  
Program Operations Branch

Date

**Attachments:**

Annex A – Briefing Note to the Minister of Infrastructure and Communities:

Lake Manitoba/Lake St. Martin Outlet Channel Project (July 2019)

Annex B – Ministerial Decision letter on Lake Manitoba/Lake St. Martin Outlet Channel Project (August 2019)



Infrastructure  
Canada

PROTECTED B

## BRIEFING NOTE TO THE MINISTER OF INFRASTRUCTURE AND COMMUNITIES

### LAKE MANITOBA/LAKE ST. MARTIN OUTLET CHANNEL PROJECT

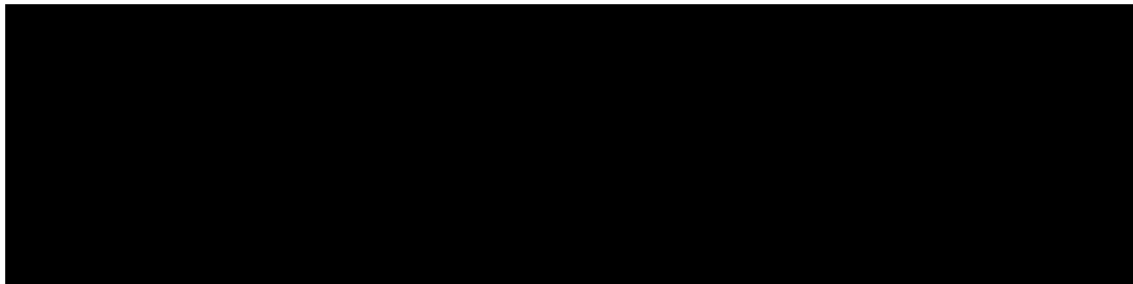
(For Signature)

#### PURPOSE

- The purpose of this note is to seek your approval on the recommended approach for the signing of a Contribution Agreement (CA) with the Province of Manitoba for the Lake Manitoba/Lake St. Martin Outlet Channel Project (the Project) under the Disaster Mitigation and Adaptation Fund (DMAF).

#### HIGHLIGHTS/KEY CONSIDERATIONS

- The Project was announced in June 2018 and INFC and the Government of Manitoba have been negotiating the CA since last July. Manitoba is now pressing Infrastructure Canada (INFC) to sign the CA for this project as Manitoba wants to submit claims for project expenditures. However, any flow of funds require the CA to be fully executed and signed by both parties.
- There are several implications to consider before signing the CA for this project with Manitoba:



- The project has been designated under the *Canadian Environmental Assessment Act 2012* (CEAA 2012), and this federal assessment, led by the Canadian Environmental Assessment Agency (CEAA), [REDACTED] [REDACTED] Until then, only planning costs can be incurred as eligible expenses and reimbursed to Manitoba, and no construction activity can take place. [REDACTED]



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- It should be noted that Manitoba would also have to meet the federal requirement of providing a Greenhouse Gas assessment prior to INFC flowing funds under this CA,

**PROTECTED B****KEY BACKGROUND**

- This project includes a total federal contribution of \$247.5M and was approved in principle under the DMAF on June 1, 2018 outside of the competitive process.
- INFC has been negotiating the CA with Manitoba since July 2018. [REDACTED]
- It is anticipated that next Manitoba Provincial Election will be on September 10, 2019.

**RECOMMENDATION AND NEXT STEPS**

- Three options are presented below. [REDACTED]


- Option 1: [REDACTED]

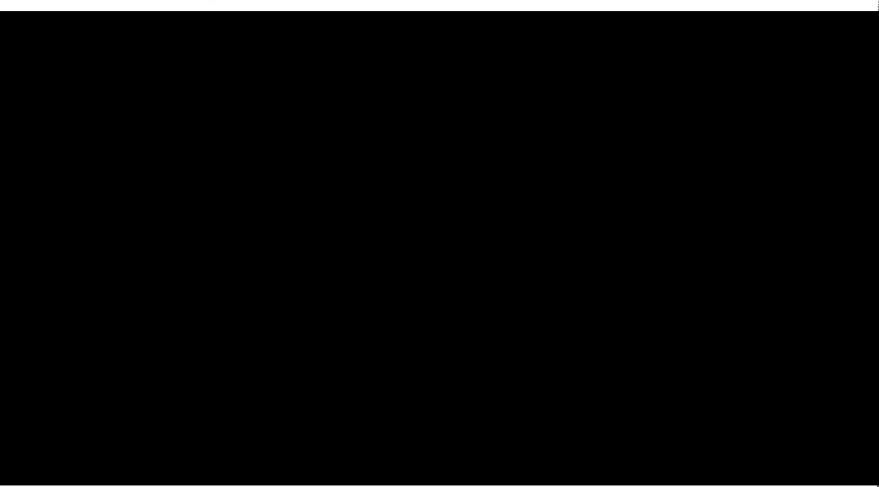
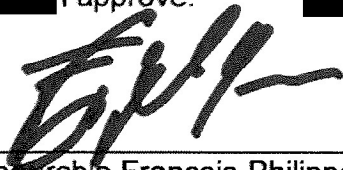
- Option 2: [REDACTED]

- Option 3: [REDACTED]

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- Following your decision, a Ministerial Letter to the Province of Manitoba indicating your decision on this matter will be prepared for your signature.

|   |                    |
|---|--------------------|
|  | <u>JUL 11 2019</u> |
| Kelly Gillis<br>Deputy Minister<br>Infrastructure and Communities                 | Date               |

|  |   |  |
|--|---|--|
| Option 1:  |  |  |
| Option 2:  |   |  |
| Option 3:  |   |  |
| <input checked="" type="checkbox"/> I approve.   | <input type="checkbox"/> I do not approve.  | <input type="checkbox"/> For discussion. |
|                   |   | <u>AUG 07 2019</u>                       |
| The Honourable François-Philippe Champagne, P.C., M.P.<br>Minister of Infrastructure and Communities |   | Date                                     |

Attachment:

Annex A – Lake Manitoba draft Contribution Agreement Status Chart

Annex B – Contribution Agreement Timeline

# Annex A

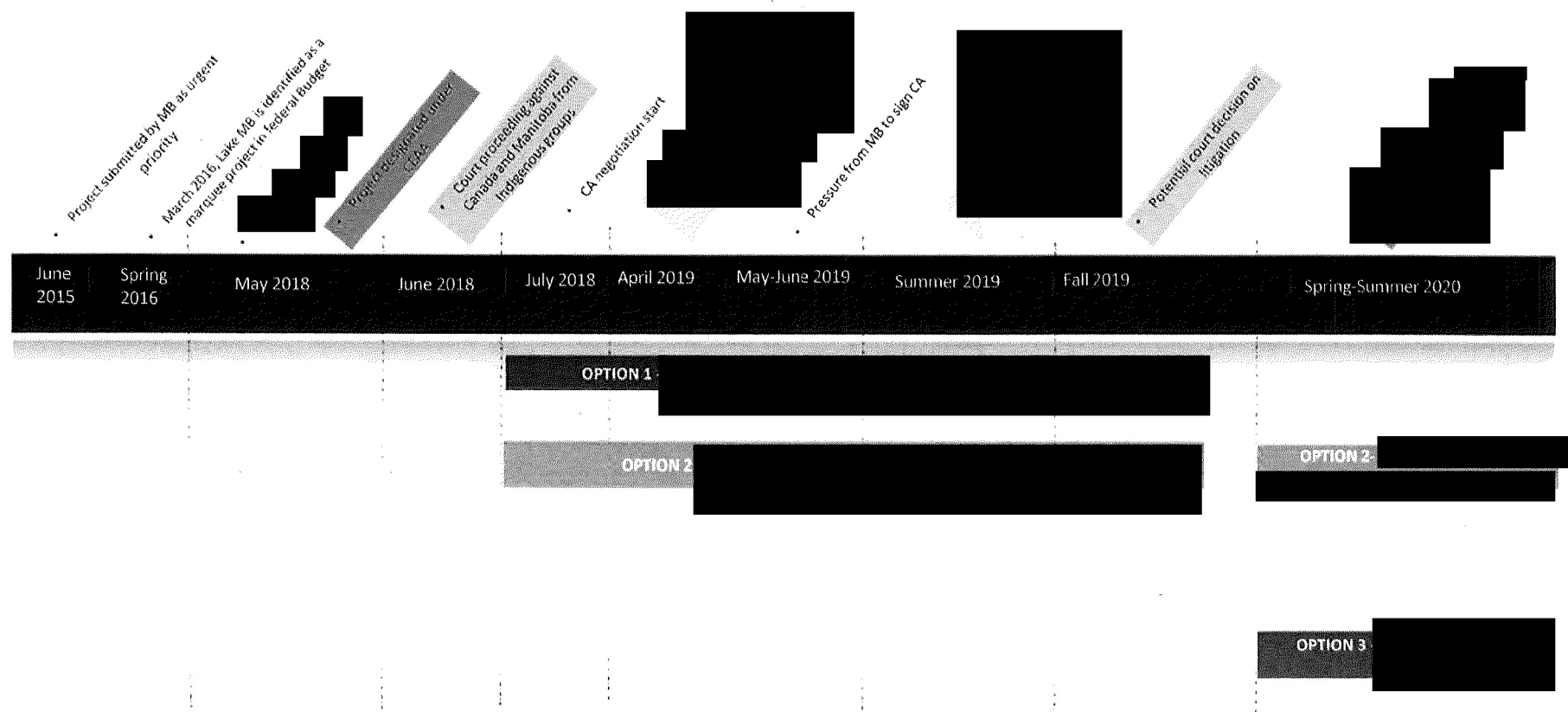
**LAKE MANITOBA/LAKE ST. MARTIN DRAFT CONTRIBUTION AGREEMENT STATUS CHART**  
**As of June 25**

**Outstanding issue related to the draft CA:**

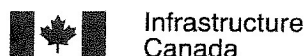
| Issues | Flexibility | Comments |
|--------|-------------|----------|
|        |             |          |

# Annex B

# LAKE MB CA SIGNATURE TIMELINE



July 10, 2019



**PROTECTED B**

## **BRIEFING NOTE TO THE MINISTER OF INFRASTRUCTURE AND COMMUNITIES**

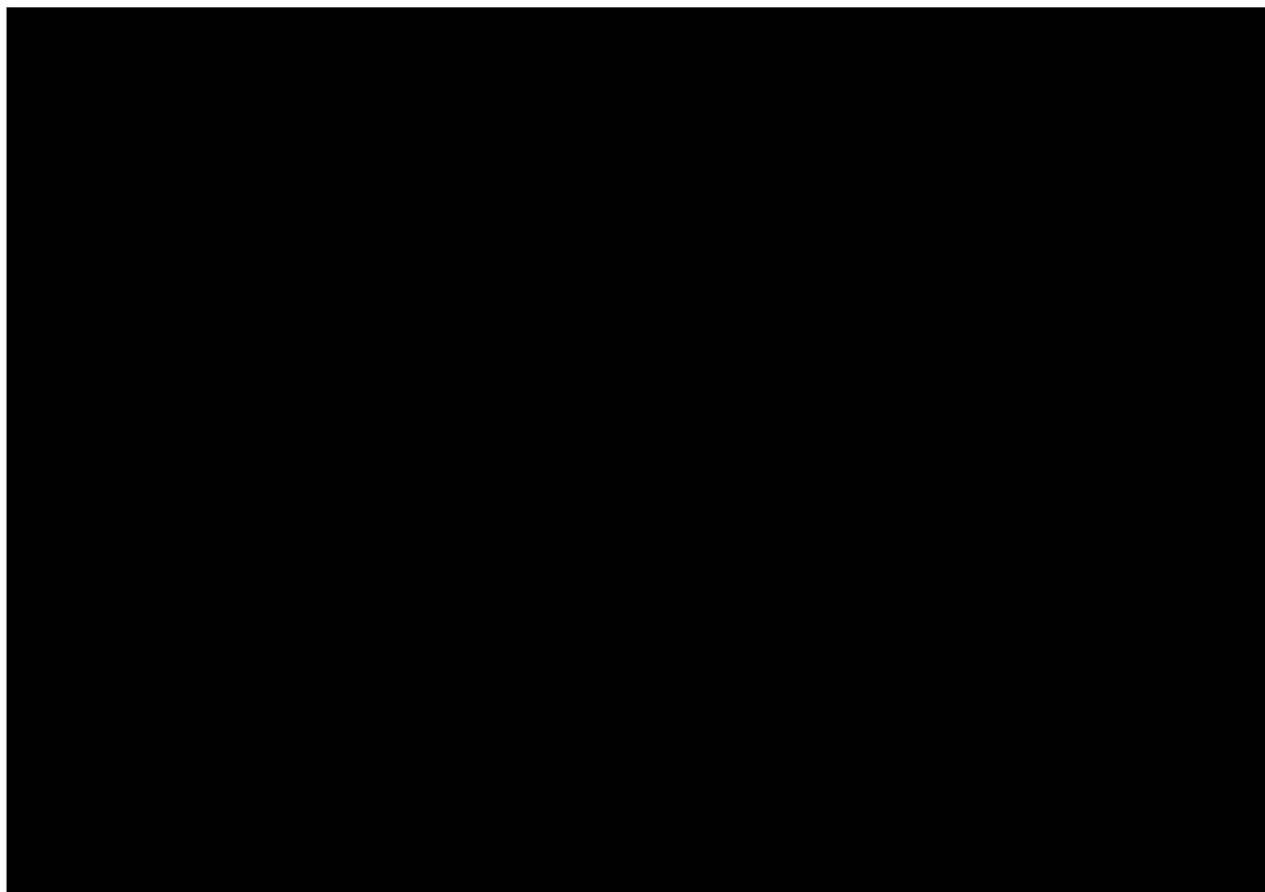
### **LAKE MANITOBA/LAKE ST. MARTIN OUTLET CHANNEL PROJECT**

(For Signature)

#### **PURPOSE**

- The purpose of this note is to seek your signature on the letter (Annex A) to Manitoba's Minister of Municipal Relations, Jeff Wharton. The letter informs him of the delay in signing the Contribution Agreement (CA) for the Lake Manitoba/Lake St. Martin Outlet Channel Project (the Project) under the Disaster Mitigation and Adaptation Fund (DMAF) given current court litigation and the Federal environment assessment (EA) by the Canadian Environmental Assessment Agency (CEAA).

#### **HIGHLIGHTS/KEY CONSIDERATIONS**





**PROTECTED B****KEY BACKGROUND**

- This project includes a total federal contribution of \$247.5M and was approved in principle under the DMAF on June 1, 2018 outside of the competitive process.
- INFC has been negotiating the CA with Manitoba since July 2018. [REDACTED]
- It is anticipated that the next Manitoba Provincial Election will be on September 10, 2019.

**RECOMMENDATION AND NEXT STEPS**

- It is recommended that you sign the attached Ministerial Letter (Annex A) to the Manitoba Minister of Municipal Relations, Jeff Wharton.

Kelly Gillis  
Deputy Minister

Infrastructure and Communities

Date

☐ I approve.

☐ I do not approve.

☐ For discussion.

The Honourable François-Philippe Champagne, P.C., M.P.  
Minister of Infrastructure and Communities

Date

Attachment:

Annex A – Ministerial Letter to the Province of Manitoba



The Honourable Jeff Wharton, M.L.A.  
Minister of Municipal Relations  
Government of Manitoba  
Room 301, Legislative Building  
450 Broadway  
Winnipeg, Manitoba R3C 0V8

AUG 13 2019

Dear Minister:

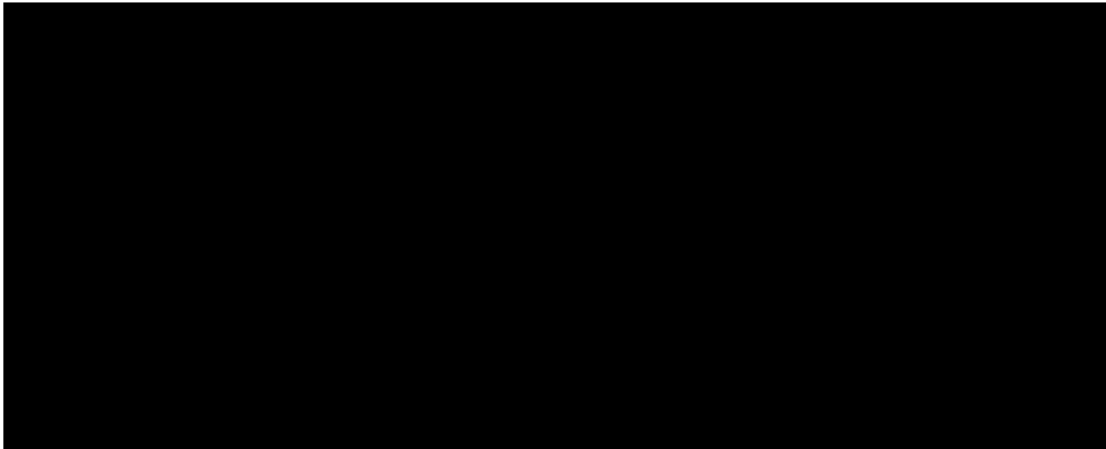
I would like to provide you with an update regarding the Lake Manitoba / Lake St. Martin Outlet Channels Project (the Project) under Infrastructure Canada's Disaster Mitigation and Adaptation Fund (DMAF), specifically regarding Infrastructure Canada's proposed approach for the signature of the Contribution Agreement.

On May 31, 2018, my predecessor, the Honourable Amarjeet Sohi, sent a letter to your predecessor, the Honourable Eileen Clark, to inform her that the Project was approved in principle along with the specific conditions, including the signature of a contribution agreement, prior to the Government of Canada reimbursing Manitoba for any eligible expenses that have been incurred (Annex A).

Our respective officials have been working collaboratively to finalize the contribution agreement for the Project in advance of our respective signatures. I understand that Manitoba is seeking to expedite the signature of this contribution agreement to submit claims for the Project to my department and be reimbursed for incurred eligible expenses. However, delays in negotiations have been encountered, mainly due to the court proceeding against the Province of Manitoba and Canada related to the consultation process with First Nations and the federal environmental assessment that is currently underway under the *Canadian Environmental Assessment Act, 2012*. This assessment will need to be completed and all related requirements will need to be met, including Indigenous consultation, prior to the start of construction. The Project is also conditional upon Canada being satisfied that the responsibility of the federal authority and/or responsible authority under the *Canadian Environmental Assessment Act, 2012* or other applicable legislation in force, and other applicable agreements between Canada and Aboriginal groups are met and continue to be met.

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This proposed approach seeks to reduce our respective governments' legal, financial and reputational risks associated with the Project while also accommodating Manitoba's request for an expedited reimbursement process for the non-capital expenses for this Project.

Please note that, prior to Canada paying any claims for the Project, a greenhouse gas emissions assessment must be completed to Canada's satisfaction in accordance with the Climate Lens General Guidance and submitted to Canada.

I note that Manitoba's Project's application originally indicated that construction for this Project was planned to get underway in December 2018 and be completed in 2025. As your Project was approved in principle on the basis of this information, please notify my officials, in writing, with an updated expected start date and completion date.

Thank you for your collaboration and I look forward to continuing to work together with respect to this Project in a timely fashion.

Yours sincerely,

The Honourable François-Philippe Champagne, P.C., M.P.  
Minister of Infrastructure and Communities

Enclosure: 1



The Honourable Eileen Clarke, M.L.A.  
Minister of Indigenous and Municipal Relations  
Government of Manitoba  
Room 301, Legislative Building  
450 Broadway  
Winnipeg, Manitoba R3C 0V8

**MAY 31 2018**

Dear Minister:

I am pleased to inform you of the approval-in-principle of the Lake Manitoba/Lake St. Martin Outlet Channels Project. This approval is given following the successful review of your Project under the terms and conditions of the Disaster Mitigation and Adaptation Fund (DMAF). Approval of the Project does not form part of the Operation Return Home (ORH) resettlement mandate and is distinct and separate from ORH and any related litigation.

Federal funding of the Project from the DMAF will be up to 50 percent of the total eligible project costs, to a maximum federal contribution of \$247,500,000 under this program. Federal funding from all sources cannot exceed 50 percent of the project's total eligible costs.

With this approval-in-principle, eligible costs as determined under the terms and conditions of the DMAF and incurred as of the date of this letter will be eligible for federal reimbursement subject to the timely execution of a contribution agreement. If a contribution agreement is not signed, the Government of Canada will not reimburse any costs incurred. Once signed, the contribution agreement represents the final federal approval of the Project.

If there is a change to the scope of the Project, please contact Infrastructure Canada as soon as possible, as any scope changes require approval by Canada.

As we move to the contribution agreement stage, the following conditions will also apply:

- Regardless of the outcome of any of the project tendering processes, all ineligible costs, cost increases or overruns, and any costs related to the ongoing operation and maintenance of the Project, will be the responsibility of Manitoba.

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- Expenditures incurred prior to the date of this letter, as well as any and all expenditures related to contracts signed prior to the date of this letter, are ineligible for reimbursement.
- Manitoba will satisfy the Government of Canada with respect to the competitive and transparent tendering process to be established.
- Manitoba and the Government of Canada will work to complete the negotiation of a contribution agreement in a timely manner. To this end, Manitoba will provide cash flows broken down by fiscal year for all project components; a clear indication of how the Project will contribute to one or more of the program outcomes and benefits; as well as the indicators that will be used to report on the outcomes and benefits at the project's substantial completion.
- Prior to signing a contribution agreement, Manitoba will provide the Government of Canada evidence that all project funding, other than the federal contribution under the DMAF, has been secured.
- Manitoba agrees to work with Infrastructure Canada to jointly communicate Canada's funding commitment as soon as possible and to invite Canada to participate in future media announcements or events related to the project's progress and, where appropriate, to produce and erect temporary signage at each of the project sites acknowledging the federal government's contribution to the Project in accordance with the signage guidelines to be provided by the Government of Canada.
- Manitoba must complete the land acquisition process for the Lake Manitoba project before any funding for construction can be provided by the Government of Canada.
- Please note that approval of the Project is conditional upon Canada being satisfied that the responsibility of the federal authority and/or responsible authority under the *Canadian Environmental Assessment Act, 2012* or other applicable legislation in force, and other applicable agreements between Canada and Aboriginal groups are met and continue to be met. The *Canadian Environmental Assessment Act, 2012* applies to the Project. A federal environmental assessment is currently underway. The review will need to be completed and all related requirements will need to be met, prior to the start of construction.
- Canada's funding for a project is also conditional upon Canada being satisfied that its obligations with respect to the legal duty to consult and accommodate Aboriginal groups, if applicable, are met. Based on the information provided, the Government of Canada has a duty to consult and may have a duty to accommodate Aboriginal groups for the Project under section 35 of the *Constitution Act, 1982*. Manitoba will ensure that site work and construction of the Project does not begin prior to confirmation by Infrastructure Canada that these requirements have been met.

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- A greenhouse gas emissions assessment must be completed to Canada's satisfaction in accordance with the *Climate Lens General Guidance* and submitted to Canada, prior to Canada paying any claims for the project.
- Manitoba will report on community employment benefits provided to at least three of the federal target groups (apprentices, Indigenous peoples, women, persons with disabilities, veterans, youth, new Canadians, or small- medium-sized enterprises and social enterprises); and
- Manitoba is also encouraged to consider the economic development and employment opportunities of the local and affected First Nations in the construction of the project.

I note that the project application you have submitted specifies that project construction is planned to get underway in December 2018 and be completed in 2025. As your Project is being approved in principle on the basis of this information, please notify Infrastructure Canada officials, in writing, should you expect delays of more than six months in either the start or completion date.

Thank you for your collaboration to date. I look forward to continuing to work together to conclude a contribution agreement for this project in a timely fashion.

Yours sincerely,



Amarjeet Sohi, P.C., M.P.

c.c. The Honourable Jane Philpott, P.C., M.P.  
Minister of Indigenous Services